

44219

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

Mark C. Smith

Serial No.: 10/631,957

Filed: August 1, 2003

For: MOBILE AIR POWERED MATERIAL  
SEPARATOR

Group Art Unit: 3653

Examiner: J. Rodriguez

RESPONSE TO RESTRICTION REQUIREMENTCommissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

Applicants hereby respond to the Office Action dated June 14, 2004. Because this response is being filed within the shortened statutory period set by the Examiner, no extension fee is believed to be due at this time. However, should any fee be deemed necessary, Applicant hereby authorizes any such fee to be charged to Deposit Account No. 18-2220.

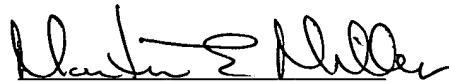
In the Office Action, the Examiner has required restriction under 35 U.S.C. §121 to one of the following inventions: Invention (I) claims 1-16, classified in class 406, subclass 109; and Invention (II) claims 17-25, classified in class 209, subclass 139.1. This requirement is respectively traversed.

There is a significant degree of overlap in the classification cited by the Examiner. Reviewing the class definition for class 406, it recites on page 406-2, that class 209 should also be searched when performing a search of an invention classified in class 406. Because of this common area of search, the Applicant believes that it will not be a serious burden on the Examiner to search and examine all of the claims. Under

MPEP §803, "[i]f the search and examination of an entire application can be made without serious burden, the examiner *must* examine it on the merits, *even though* it includes claims to independent or distinct inventions" (emphasis added). In the Applicant's view, that is exactly the situation in the present case.

Should the Examiner disagree with the Applicant's position in this matter, the Applicant provisionally elects Invention II (claims 17-25) for further prosecution in this application.

Respectfully submitted,



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Dated: July 20, 2005